

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (AT DAYTON)**

KILLER BROWNIE, LTD. : **Case No. 3:07CV0362**

Plaintiff, : **(Judge Thomas M. Rose)**

vs. :

HAL HARRIS :

Defendant. :

**ORDER GRANTING MOTION FOR JUDGMENT BY DEFAULT AND
TERMINATING THIS CASE**

This matter is before the Court on Plaintiff's Motion for Judgment by Default (Doc. 19) and Memorandum in Support of Motion for Judgment by Default (Doc. 20). The Court finds that Defendant, Hal Harris, was duly served with Summons and a copy of the Complaint in this matter via certified mail service on November 1, 2007¹, and has failed to answer or otherwise plead as required by the Civil Rules.² The Court further finds that no response to Plaintiff's Motion for Judgment by Default was filed by or before the deadline for response of January 14, 2008. Accordingly, the Court finds that Plaintiff's Motion for Judgment by Default is well taken and that Plaintiff is entitled to judgment by default against Defendant, Hal Harris.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff shall be, and it hereby is, granted judgment by default against Defendant, Hal Harris, and that Plaintiff

¹ See Return of Summons filed herein on November 7, 2007, as Doc. 15.

² See Clerk's Entry of Default Against Defendant, Hal Harris entered on December 14, 2007, as Doc. 18.

shall be, and it hereby is, granted the following relief as prayed for in Plaintiff's Complaint and Motion for Judgment by Default:

- A. Defendant, Hal Harris, and his agents, servants, employees and affiliates are permanently enjoined and restrained from directly or indirectly using in the United States the trademark Killer Brownie, the Killer Brownies Logo, or any other mark, word or name confusingly similar to Plaintiff's marks, and from otherwise engaging in unfair competition with Plaintiff;
- B. Defendant is Ordered to deliver to Plaintiff for destruction all labels, signs, prints, packages, wrappers, receptacles and advertisements in its possession bearing the Killer Brownie trademark, the Killer Brownies Logo, or other infringing designation within fourteen (14) days from the date this Order is entered;
- C. Defendant is ordered to disable the web page accessed through the killerbrownies.com domain name and to surrender the domain name and registration to Plaintiff within fourteen (14) days from the date this Order is entered and Defendant is enjoined from using a domain name that incorporates the Killer Brownie trademark; and
- D. Plaintiff is awarded statutory damages for the violations of the Anticybersquatting Consumer Protection Act in the amount of One-Hundred Thousand and 00/100 Dollars (\$100,000.00).³

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.⁴

January 23, 2008

SO ORDERED.

s/Thomas M. Rose

Honorable Thomas M. Rose

³ Plaintiff's Counsel has notified the Court that Plaintiff elects to recover statutory damages pursuant to 15 U.S.C. § 1117(c) instead of actual damages and profits and attorneys' fees and costs pursuant to 15 U.S.C. § 1117(a). Further, the treble damages set forth in 15 U.S.C. § 1117(b) are only available pursuant to 15 U.S.C. § 1117(a).

⁴ This clause is added by the Court.

Submitted by:⁵

/s/ Andrew C. Storar

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing Order Granting Motion for Judgment by Default will be served on the following by certified and regular U.S. Mail, first-class postage prepaid, on the same date as the Entry is filed by the Clerk's Office:

Hal Harris, 2549 Eastbluff Drive, Newport Beach, CA 92660.

/s/ Andrew C. Storar

Andrew C. Storar (0018802)
Suzanne P. Beck (0077425)
Attorneys for Plaintiff

⁵ Modified by the Court as indicated in footnotes 3 and 4 above.